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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 HOWARD ELLIS,

7 Plaintiff,

3:08-cv-00657-MMD-WGC

ORDER

8 v.

9 JAMES BENEDETTI, et. al.,

10 Defendants.
11

12 Before the court are the following motions:

- 13 (1) Plaintiff's Motion for Production of Transcripts at Government Expense (Doc. # 266); and
14 (2) Defendants' Motion to Stay Briefing on Plaintiff's Motion for Production of Transcripts at
15 Government Expense (Doc. # 273).

16 Plaintiff appealed the court's decision to deny his motion for preliminary injunction.
17 (Doc. # 258.) The Ninth Circuit issued a referral notice referring this matter to the district court
18 for the limited purpose of determining whether Plaintiff's in forma pauperis status should
19 continue for his appeal. (Doc. # 263.)

20 Plaintiff filed a motion seeking an order that the government incur the expense for the
21 transcripts of the record at Doc. # 265, Vol. I and II p. 1-6, from September 11, 2013, to be
22 provided to Plaintiff as well as the appellate court. (Doc. # 266.)

23 District Judge Miranda M. Du referred the issue of whether Plaintiff's in forma pauperis
24 status should continue on appeal to the undersigned, and the undersigned issued a report and
25 recommendation that the court enter an order certifying that Plaintiff's appeal was not taken in
26 good faith and revoking his in forma pauperis status on appeal. (Doc. # 267.) Plaintiff filed an
27 objection. (Doc. # 272.) Judge Du issued an order overruling the objection and adopting and
28 accepting the report and recommendation, certifying that the appeal was not taken in good faith

1 and revoking his in forma pauperis status on appeal. (Doc. # 274.)

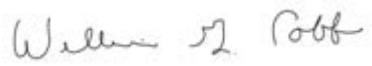
2 The Ninth Circuit then issued an order confirming that Plaintiff was not entitled to in
3 forma pauperis status on appeal because the appeal was frivolous. (Doc. # 286.) The Ninth
4 Circuit directed Plaintiff to pay the filing fee within 21 days if he wished to pursue his appeal, or
5 it would be dismissed for failure to prosecute. (*Id.*) Plaintiff failed to pay the filing fee, and the
6 appeal was dismissed. (Doc. # 293.)

7 Because Plaintiff was not permitted to maintain his in forma pauperis status on appeal,
8 and in light of the dismissal of his appeal for failure to prosecute the action, Plaintiff's motion for
9 production of the transcript at government expense (Doc. # 266) is **DENIED**.

10 In their motion (Doc. # 273), Defendants sought a stay of briefing on Plaintiff's motion
11 (Doc. # 266) pending a determination of whether or not Plaintiff's in forma pauperis status would
12 be maintained on appeal. This motion is **DENIED** as moot.

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14 **IT IS SO ORDERED.**

15 DATED: April 24, 2014

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WILLIAM G. COBB
19 UNITED STATES MAGISTRATE JUDGE
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